1951 **File No.** S. Bel 5

K

Legal **DEPARTMENT**

A **BRANCH**

Subject:— Suits Belgaum

In the court of the Civil Judge (S. Belgaum

Civil Suit No. 138 of 1950

Vinayak Vishnu Yellurkar - Plff.

Vs.

The state of Bombay and others. } - Defts.

For possession of suit land with future mesne profits

P-89

F

S. Belgaum 5/51

File No.

Std. Sectt. Slip 24-B

S. Bel 5/51

DOCKET SHEET

Subject :- Suits: Belgaum File No. 12551

S. No. 138 of 1949. Legal Dept.

Vyjak Vithoba Yellankar A BRANCH.

Vs.

State of Bombay.

References :-

Date	To whom sent.	Notes and instructions.
21/7/50	Mr. Chitale	Usual memo to the DGP for 2 months adj is putup AC 24/7 Ajit 24/7 No. 10428 dt. 24/7/50 Issued esp 24/7
		Subtd for brief AC 25/7 N.S.

15246
27-9-49

1949.

letter overleaf may be sent
to forward Belgium may file requested
his report for defence of the
suit.

Report is put up below for signature.

No. 10931 d. 29-9-1945.

Issued
cop
29/9

28/9

Sd. B.A. Jakati.

No. O.S. 158 of 1941.
Belgium, 26th Sept 1941.

Copy forwarded with compliments to-gether with the copy of plaint to the Remembrancer of Legal Affairs, Bombay - for necessary action and govt. sanction for the defence of the suit.

Secretariat. after issue
await report

30/9/49

Asst. Govt. Leader,
Belgium.

Reg.O.S.No. 138 of 1949.

In the Court of the Civil Judge, Senior Division,
Belgaum.

1. Vinayak Vishnu Yallurkar, age 70, caste Brahmin, Occ. Agriculturist, residing at Vadagaon, Taluka Yellur. — Plaintiff

Vs.

1. The Collector of Belgaum. and Chief Administrator of the Kurandwad Jr. State.
2. Dattatraya Kashinath Mokashi, caste Brahmin, aged 48, occ. Cloth merchant, residing at Thalakawadi, B.No.1706 (Belgaum)
3. Gangubai W/o Ramrao Pandit, caste, Brahmin, aged 45, occ. household work, residing at Thalakwadi, Belgaum.
4. Narayan Nagappa Kanabarkar, caste maratha, aged 50, agriculturist, residing at Yellur Taluka Shahapur, District Belgaum.
5. Gavada Yaco[illegible], caste maratha, aged 45, agriculturist, residing at yellur, Taluka Shahapur, Dist. Belgaum.

Claim Rs:- 187-8-0 for Court fe
Rs:-6000-0-0 " juridicti-on.

1. The description of the suit property is as follows:-

Name of the village.	Survey No.	Acres.	Assessment	Present occupant.
Yellur	224	1-20	14-0-0	Deft. No.2.
Yellur	226	1- 9	11-0-0	Deft. No.3.
			25-0-0	

2. The above mentioned lands were granted in Inam to Janardhan Chango Yallurakr, the deceased grand-father of the piff in or about the year 1864 A.D. by the then Joint Jahagiradars of Kurandawad Junior State. The grantee was to enjoy the lands as owner permanantly from generation to enjoy the lands as owner permanently from generation to generation as per terms of the grant. But as the lands wer

not in possession of the state, the Darbar could no hand over to the grantee the actual possession of these lands. However the origional grantee succeeded in securing the actual possession of these lands by making private arrangements with the then occupants. Thus the plff who is the grandson of the origional grantee has acquired complete title over all the suit lands on the strengh of the origional grant and also on the strengh of his continuous and open poss--ssion as owner for a period of more than 12 years adverse possession to the whole world. On both these grounds the plff has become the full owner of the suit lands.

3. The then Jahagirdars picked up some quarrel and resumed the possession of the suit lands on 28-4-1942. Teh plff tried to recover the lands by applying to the state Rulers. This was the only way left open as he could not file a regular civil suit in the court of law against the Government of state in accordance with the laws prevailing then in the state. However recently the Durbar has kindly given permission to all persons to file a civil suit against the Govt. of State by Notification published in the issue of the state gazzette dated 10th March 1946. Thus the cause of action has been acrued on that day to file this suit for possession of the suit lands and for future mense profits against the Govt. and other defts who are today in actual possession of the suit lands.

4. The other defts Nos. 2 and 3 are respectively in possession of the respective lands as shown in para No.1 above. They say that they have purchased these lands from the then Rulers of the Kurandwad Junior State who are now represented by deft No.1. The plff denies in toto their alleged rights. Besides they can

never have better title than the deft No.1. Morever all - defts already were aware about the plff's right before the derived their title from the state. The defendants cannot - have better title than the plaintiffs. All defendants are, therefore, trespassers as against the plaintiff. Defendant No.4 is the present tenant of the deft No.2, and the deft - No.5 is the present tenant of the deft No.3."

5. The plaintiff, therefore, files this suit for possession of the suit lands and future mense profits. The deft - No.1 has been served on 9th March 1949 with two months' notice as required by section 80 of the Civil Procedure Code. The cause of action for the suit arose on 10-3-1946 - the - date of the publication of the above mentioned state proclamation in the state gazette. The plff submits that the - period of Limitation for filing this suit is 12 years - commencing from 10-3-1946. Even assuming that this period is for three years only still the suit is filed within the period allowed by the law of Limitation as the plaintiff is entitled to add to this period, the period od two months - required for the notice and the period during which the - Court remained closed for the summer vacation.

6. The suit lands are situated within the special Jurisdiction of this Court, and the cause of action also arose within the juridiction of this Court. Therefore this Court has juridiction to try this suit.

7. The total assessments of the suit lands is Rs.25/- . on multiplying it by 7½ it comes to Rs.187-8-0. This is the valuation for the purpose of paying the Court fee. The - valuation of this suit for juridiction is Rs. 6,000/- the market price of the suit lands.

8. The plaintiff, therefore, prays that :-

(1) the possession of the lands mentioned in para No.1 of the plaint should be given to the plff.

(2). The future mense profits should be determined and awarded to the plff.

P.T.O.

(3) The costs of this suit should be given to the plff.

(4) Any other relief to which the plff may be found entitled should also be given.

(5) The plaintiff should be allowed to amend the plaint if the necessary arises.

The plff prays that the decree may be passed accordingly.

dated.

Sd/
Pl. for plff.

Letter.

To:
The Remembrancer of Legal Affairs,
Bombay.

Subject:- Regular Suit No. 138 of 1949.
Report under Rule 118 of Law Officers' Rules

Reference: Your D.O.Letter No.8658 dt.23-6-1950.

...

No. L.A.W. 835. Belgaum, 15th July 1950.

The information regarding the regular Suit No. 138 of 1949 as required under rule 118(1) of L.O.Rs is given below:-

(i) Regular suit No. 138 of 1949;

(ii) Filed on 8-8-1949, in the Court of the Civil Judge S.D.Belgaum.

(iii) (1) Vinayak Vishnu Yellurkar, residing at Vadagaon. } Pltff.
V.S.
(2) The Collector of Belgaum and the Chief Administrator of Kurundwad, Junior state.
(2) Dattatraya Kashinath Mokashi, residing at Thalakawadi, Belgaum. } Deftd.
(3) Gangubai W/o Ramarao Pandit, residing at Thalakwadi, Belgaum.
(4) Narayan Nagappa Kanabarkar, residing at Shahapur.
(5) Gavadu Yadav Patil, residing at Shahapur.

(iv) Claims for court fees --- Rs. 187-8-0:
& for jurisdiction:- --- Rs.6000-0-0.

(v) The First date fixed for filing the written statement was :- --- 28-10-1949;
& the next date fixed is:---- 14-7-1950.

(vi) Notice of Suit under Sec.80 of C.P.C. was delivered on 9-3-1949, and is at p.1 of File No,VI.

2. The following papers, are sent herewith as required by Rule 118(2) of Law Officers' Rules.
(a) A copy of the Plaint in English (in duplicate); (No dooouments are annexed to the plaint).

(b) A statement fof facts snd the grounds on which it is proposed to defend the suit (in duplicate)

(c) Case papers in seven files.

3. The Dist.Govt.Pleader, Belgaum, is being requested to take a long adjournment till Govt., sanction to defend the suit is received. Necessary instructions may please be issued early to defend the suit.

V-15/7.

For Collector of Belgaum.

Copy fwd.w/cs to the D.G.P.Belgaum, with a request to take a long adjournment till the Government sanction is received.

Regular Civil Suit No. 138/1949.

In the Court of the Civil Judge, Senior Division,Belgaum.

1. Vinayak Vishnu Yallurkar, aged 70, Cast Brahmin, Occupation Agriculturist, residing at Vadagaon, Taluka Yallur. Plaintiff

Against.

1. The Collector of Belgaumand Chief Administrator of the Kurundwad Junior State.

2. Dattatraya Kashinath Mokashi,Cast Brahmin, aged 48, occupation Cloth Merchant, residing at Thalakwadi, Bungalow No.1706(Belgaum) .

3. Gangubai w/o Ramarao Pandit, Cast Brahmin, aged 45,occupation household work,residing at Thalakwadi, Belgaum. Defendants.

4. Narayan Nagappa Kanabarkar, Cast Maratha, aged 50, Agriculturist, residing at Yallur, taluka Shahapur,District Belgaum.

5. Gavadu Yado Patil, Caste Maratha, aged 45, Agriculturist,residing at Yallur, taluka Shahapur, District Belgaum.

Claim Rs. 187-8-0 for Court fee.
Rs.6,000-0-0. For Jurisdiction.

1. The description of the suit property is as follows:-

Name of the village.	Survey Number.	Acres.	Assessment.	Present Occupant.
Yallur.	224.	1--20.	14-0-0.	Defendant No.2.
Yallur.	226.	1---9.	11-0-0.	Defendant No.3.
			25-0-0.	

2. The above-mentioned lands were granted in Inam to Janardan Change Yallurkar,the deceased grandfather of the Pltff.in or about the year 1884,A.D. by the then joint Jahagirdars of Kurundwad Jr.State. The grantee was to enjoy the lands as owner permanently from generation to generation as per terms of the grant. But as the lands were not in possession of the State, the Durbar could not and ever to the grantee the actual possession of these lands. However the original grantee succeeded in securing the actual possession of these lands by making private arrangements with the then occupants. Thus the Pltff.who is the grandson of the original grantee has acquired complete title over all the suit lands on the strength of the original grant and also on the strength of his continuous & open possession as owner for a period of more than 12 years adverse to the whole world. On both these grounds the pltff. has become the full owner of the suit lands.

3. The then Jahagirdars picked up some quarrel and resumed the possession of the suit lands on 28-4-42. The pltff.tried to recover the lands by applying to the State Rulers. This was the only way left open as he could not file a regular civil suit in a court of law against the Govt.of the State in accordance with the laws prevailing then in the State.However recently the Durbar has kindly given permission to all person to file a civil suit against the Govt.of State by a Notification published in the issue of the State Gazette dt.10th. March.1946. Thus the cause of action has been accrued on that day to file this suit for possession of the suit lands & for future means profits against the Govt.and other defts. who are today in actual possession possession of the suit lands

lands.

4. The other defts.Nos.2 and 3 are respectively in p ssession of the respective lands as shown in para No. 1 above. They say that they have purchased these lands from the then rulers of the Kurundwad Jr.State who are now represented by Deft.No.1. The Pltff.denies in toto their alleged rights. Besides they can never have better title than the deft.No.1. Moreover all defts.already were aware about the pltff's right before they derived their title from the State. The defts.cannot have better title than the pltffs. All Defts.are,therefore,tress--passers as against the pltff. Deft.No.4 is the present tenant of the deft.No.2,and the deft.No.5 is the present tenant of the deft.No.3.

5. The Pltff,therefore,files this suit for possession of the suit lands and future means profits. The Deft. No.1 has been served on 9th Mar.'49,with two months' notice as required by Sec.80 of the C.P.C. The cause of action for the suit arose on 10-3-1946- the date of the publication of the above mentioned State proclamation in the State Gazette. The pltff.submits that the period of limitation for filing this suit is 12 years commenc--ing from 10-3-1946. Even assuming that this period is for three years only still the suit is filed within the period allowed by the Law of Limitation as the pltff. is entitled to add to this period,the period of two months required for the notice & the period during which the court remained closed for the summer vacation.

6. The suit lands are situated within the spl.jurisdction of this Court,and the cause of action also arose within the jurisdiction of this court. Therefore,this court has jurisdiction to try this suit.

7. The total assessment of the suit lands is Rs.25/-.On multiplying it by 7½ it comes to Rs.187-8-0. This is the valuation for the purpose of paying the court fee. The valuation of this suit for jurisdiction is Rs.6,000/- the market price of the suit lands.

8. The Pltff.therefore,prays that:-
(1) the possession of the lands mentioned in para No.1 of the plaint should be given to the pltff;
(2) The future mesne profits should be determined and awarded to the pltff;
(3) The costs of this suit should be given to the pltff;
(4) Anyother relief to which the pltff.may be found entitled should also be given.
(5) The pltff.should be allowed to amend the pltff.- if the necessity arise.

.....
The Pltff.prays that the decree may be passed accordingly.

Dated:- 8-8-1949.

I , Vinayak Vishnu Yallurkar, residing at Vadgaon, do solemnly declare today at Vadgaon that what is stated in the above paras Nos. 1 to 8 is correct to my own information and belief.

Dated.

Regular Civil Suit No. 138/1949.

In the Court of the Civil Judge, Senior Division, Belgaum.

1. Vinayak Vishnu Yallurkar, aged 70, Cast Brahmin, Occupation Agriculturist, residing at Vadagaon, Taluka Yallur. Plaintiff

Against.

1. The Collector of Belgaumand Ex Officio Administrator of the Kurundwad Junior State.

2. Dattatraya Kashinath Mokashi, Cast Brahmin, aged 48, occupation Cloth Merchant, residing at Thalakwadi, Bungalow No.1706(Belgaum).

3. Gangubai w/o Mamarao Pandit, Cast Brahmin, aged 45, occupation household work, residing at Thalakwadi, Belgaum. Defendants.

4. Narayan Nagappa Kanabargar, Cast Maratha, aged 50, Agriculturist, residing at Yallur, taluka Shahapur, District Belgaum.

5. Gavadu Yado Patil, Caste Maratha, aged 45, Agriculturist, residing at Yallur, taluka Shahapur, District Belgaum.

Claim Rs. 187-8-0 for Court Fee.
Rs.6,000-0-0. For Jurisdiction.

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Name of the village.	Survey Number.	Acres.	Assessment.	Present Occupant.
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Yallur.	226.	1---9.	11-0-0.	Defendant No.3.
			25-0-0.	

2. The above-mentioned lands were granted in Inam to Janardan Chango Yallurkar, the deceased grandfather of the Pltff. in or about the year 1864, A.D. by the then Joint Jahagirdars of Kurundwad Jr. State. The grant was to enjoy the lands as own permanently from generation to generation as per terms of the grant. But as the lands were not in possession of the State, the Durbar could not hand over to the grantee the actual possession of these lands. However the original grantee succeeded in securing the actual possession of these lands by making private arrangements with the then occupants. Thus the Pltff. who is the grandson of the original grantee has acquired complete title over all the suit lands on the strength of the original grant and also on the strength of his continuous open possession as owner for a period of more than 12 years adverse to the whole world. On both these grounds the pltff. has become the full owner of the suit lands.

3. The then Jahagirdars picked up some quarrel and resumed the possession of the suit lands on 28-4-42. The pltff. tried to recover the lands by applying to the State Rulers. This was the only way left open as he could not file a regular civil suit in a court of law against the Govt. of the State in accordance with the laws prevailing then in the State. However recently the Durbar has kindly given permission to all persons to file a civil suit against the Govt. of State by a notification published in the issue of the State Gazette dt.10th March.1946. Thus the cause of action has been accrued on this day to file this suit for possession of the suit lands, for future means profits against the Govt. and other defts. who are today in actual possession possession of the suit lands.

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4. The other defts.Nos.2 and 3 are respectively in possession of the respective lands as shown in para No. 1 above. They say that they have purchased these lands from the then rulers of the Kurundwad Jr.State who are now represented by Deft.No.1. The Pltff.denies in toto their alleged rights. Besides they can never have better title than the deft.No.1. Moreover all defts.already were aware about the pltff's right before they derived their title from the State. The defts.cannot have better title than the pltffs. All defts.are,therefore,tress--passers as against the pltffs. Deft.No.4 is the present tenant of the deft.No.2,and the deft.No.5 is the present tenant of the deft.No.3.

5. The Pltff,therefore,files this suit for possession of the suit lands and future mesne profits. The deft. No.1 has been served on 9th Sept.'46,with two months' notice as required by Sec.80 of the C.P.C. The cause of action for the suit arose on 10-3-1946- the date of the publication of the above mentioned State proclamation in the State Gazette. The pltff.submits that the period of limitation for filing this suit is 12 years commencing from 10-3-1946. Even assuming that this period is for three years only still the suit is filed within the period allowed by the Law of Limitation as the pltff. is entitled to add to this period,the period of two months required for the notice & the period during which the court remained closed for the summer vacation.

6. The suit lands are situated within the spl.jurisdiction of this Court,and the cause of action also arose within the jurisdiction of this Court. Therefore,this Court has xxxx jurisdiction to try this suit.

7. The total assessment of the suit lands is Rs.15/-.On multiplying it by 75 it comes to Rs.1125-0-0. This is the valuation for the purpose of paying the court fee. The valuation of this suit for jurisdiction is Rs.6,000/- the market price of the suit lands.

8. The Pltff.therefore, says that:-
(1) the possession of the lands mentioned in para No.1 of the plaint should be given to the pltff;
(2) The mutwa mesne profits should be determined and awarded to the pltff;
(3) The costs of this suit should be given to the pltff;
(4) Anyother relief to which the pltff.may be found entitled should also be given.
(5) The pltff.should be allowed to amend the pltff. if the necessity arise.

.....
The Pltff.prays that the decree may be passed accordingly.

Dated:- 8-8-1949.

I , Vinayak Vishnu Yallurkar, residing at Vadgaon, do solemnly declare today at Vadgaon that what is stated in the xxxxx above paras Nos. 1 to 8 is correct to my own information and belief.

Dated.

Notice of Suit under Section 80 Civil Procedure Code by Shri Vinayak Vishnu Yallurkar of Vadgaon, Taluka Shahapur.

****

CHRONOLOGICAL STATEMENT OF FACTS.

Suit lands in C.S.No.138.	
S.No.226	of Yallur.
224	
Suit lands in C.S.No.137.	
S.No. 89	of Majgaon.
183	
198	
S.No. 55	of Madhavpur.
S.No.337	of Halage.
518	
S.No.82	of Vadgaon.
102	

The marginally noted lands -- were granted in Inam to one Shri Janardhan Chango Kulkarni (Yallurkar) (Grand-father of the plaintiff) on 16-5-1864 by the Jahagirdars of the Kurundwad Junior State in recognition of the -- services rendered by him (Vide page 409 to 411, File III). After the death of Janardhan Chango, heirship enquiry ensued. The Chief of Kurundwad(Junior) under his order No.259/1316, dated 18-8-1906, recognised Shri V.V.Yallurkar (Plaintiff) as the heir of the deceased and ordered that his name should be entered to the Inam lands held by the deceased.

In about 1919, the Chief of the Kurundwad Junior, it appears, decided that these lands should be resumed as they were Jadid Inams, the continuance of which rested with the Chief. The papers regarding -- resumption of these lands are not forthcoming in the record. It however appears from a subsequent correspondence relating to S.Nos.224 and 226 at Yellur which were resumed in 1942 that the cause of resumption of the Jadid Inam lands was the attitude of the Plaintiff which was found to be disloyal and insolent towards the Ruler (Please vide the Chief's Jawak No.758/1351 dated 21-4-1942).

Being aggrieved by this order, the plaintiff filed petitions to the Political Agent and the Government of Bombay for revision. But the Government informed the plaintiff that it could not interfere with the order of the Chief as the Inam being a Jadid grant, the Chief had every right to cancel the grant and order its resumption at his pleasure. (Please vide pages 93, 101 and 117 in File No. IV).

The plaintiff has now filed two suits against Government for restoring the lands on the ground that they were resumed by the State unauthorisedly.

GROUNDS OF DEFENCE.

The lands in question had been granted to the Grand-father pf the plaintiff in 1864 as Jadid Inam, the continuance of which rested with the Chief. The Chief of Kurundwad, it appears, has resumed them from the possession of the plaintiff as he was found to be insolent and disloyal. It would appear that the Chief had power to resume the lands on this ground.

O/C signed by
the Collector.

For Collector of Belgaum.

L-4/7.

Notice of Suit under Section 80 Civil Procedure Code by Shri Vinayak Vishnu Kallurkar of Vadgaon, Taluka Shahapur.

****

CHRONOLOGICAL STATEMENT OF FACTS.

Suit lands in C.S.No.138.	
S.No.226	of Yallur.
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Suit lands in C.S.No.137.	
S.No. 89	of Majgaon.
183	
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S.No. 55	of Madhavpur.
S.No.337	of Halage.
518	
S.No.82	of Vadgaon.
102	

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In about 1919, the Chief of the Kurundwad Junior, it appears, decided that these lands should be resumed as they were Jadid Inams, the continuance of which rested with the Chief. The papers regarding -- resumption of these lands are not forthcoming in the record. It however appears from a subsequent correspondence relating to S.Nos.224 and 226 at Yellur which were resumed in 1942 that the cause of resumption of the Jadid Inam lands was the attitude of the Plaintiff which was found to be disloyal and insolent towards the Ruler (Please vide the Chief's Jawak No.758/1351 dated 21-4-1942).

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The plaintiff has now filed two suits against Government for restoring the lands on the ground that they were resumed by the State unauthorisedly.

GROUNDS OF DEFENCE.

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O/C signed by
the Collector.

For Collector of Belgaum.

L-4/7.

17

Belgaum Civil Suit No. 138/1949.

This is a suit for possession of suit lands with future mesne profits.

The suit is defensible.

The defence of the suit, may therefore be sanctioned on the lines of the accompanying brief.

2/11

7/11

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY.
15/11/50 B

Secy. R.D. 15/11

Please see p 2 of the grounds, and make the necessary correction

15/11

necessary correction as made

20/11

No. 15950

No. 16279

Office of the
Remembrancer of Legal Affairs,

Bombay Castle (Bombay No.1), 21st Nov 1950.

Subject:- Belgaum Civil Suit No 138/1949

MEMORANDUM.

The District Government Pleader, Belgaum, is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which ~~together with two copies of the written statement~~ is sent herewith in advance.

Papers of the case in nil received from the Collector accompany.

For Remembrancer of Legal Affairs.

To

The District Government Pleader. Belgaum.

Issued
21/11

Dec 9
21/11

kam. 20.4.50.

A Selection

G.A.D. No. 474 A 8-1-51
sent w Prem.
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Annual Francs Copies
[illegible]
8/1/51

Civil Suit No.138 of 1949. 21

In the Court of the Civil Judge, Sr.Dn.,
At Belgaum.

1. Vinayak Vishnu Yallurkar of Vadagaon,)
Taluka Yellur.) Plaintiff.

versus.

1. The Collector of Belgaum & Chief Administrator of the Kurandwad Junior State, and 4 others.. Defts.

Claim Rs.187-8-0 for Court fees &
Rs.6000-0-0 for jurisdiction.

Herein the written statement of Defendant No.1, is as follows:-

1. This defendant denies the plaintiff's suit in toto.

2. The suit being filed against this defendant- a Public Officer, by his official name, is not maintainable in law.

3. It is admitted by the plaintiff that the subjects of the than Kurandwad Junior State had no right to sue the State Government in the Civil Court of the State and that such right was only conferred on 10.3.1946 by the State Notification order. Such order, therefore could not operate with retrospective effect, so as to entitle the plff. to sue the State Govt. in respect of the cause of action that is said to have arisen prior to 10.3.1946. The plff. therefore, has no right what-so-ever to sue the successor Govt. in respect of the same cause of action.

4. Even assuming that the said order of resumption passed by the Ruler Rajasaheb is an illegal order, still, the successor, Govt. namely, the Govt. of Bombay, cannot be sued for the illegal acts committed by the Ruler of the State. The plff. has, therefore, no right to file the present suit against this deft. namely the Govt. of Bombay. The State's liability for such illegal acts alleged by the plff. has not been undertaken or accepted by the Govt. of Bombay.

5. It is clear from the record that the grant of the suit lands in or about the year 1864, is of the soil and not of the royal share of the Revenue. The order of resuming the actual possession of the lands is, therefore, justifiable. That the possession of the suit lands was secured by the plff's, predecessor independently, from the occupants is denied. The

allegations made by theplff. in para 2 of the plaint are not admitted. The plff. should be put to strict proof of the same.

6. The contention made by theplff. that the grant in question is an absolute grant and the Ruler had no right to revoke it, is not correct. The grant of 1864 in question is 'Jadid'. The ~~xxx~~ Sovereign Power i.e. the Ruler has always, the inherent right to revoke the 'Jadid' grants. The Civil Court cannot question this right of the Ruler to deal with these Inam grants. The order of Resumption passed by the Ruler in 1942, is therefore, a perfectly valid order, it being based on proper and valid grounds. Hence this present suit against this deft. is not maintainable.

7. The order of resumption was passed in the year 1942 or thereabout. The plff's possession of suit lands from the date of the grant to the date of the resumption was under the grant of 1864, permissive in nature only and not adverse to the State. The possession of a private man for however long duration is nugatory before a paramount resumption. The plff. cannot, therefore, claim title to suit lands by adverse possession. The allegations made by the plff. in this connection in para 2 of the plaint are denied.

8. The Ruler of the then State had the inherent right to revoke the grant for the reasons mentioned in the resumption order and ~~as such~~, he was also competent to dispose of it in the best manner he deemed fit. The plff. therefore cannot maintain this suit.

9. The suit is barred under the provision of the then prevailing laws of the State-especially of the Revenue Jurisdiction Act, then prevailing in the State.

For these reasons, the plff's. suit be dismissed with costs.

Belgaum
.. 1951

Dist. Govt.Pleader, Belgaum.

I, B.V.Jakati, Dist. Govt. Pleader, Belgaum, on behalf of the Deft. No.1, do hereby, solemnly affirm that what is stated above in the above mentioned paras 1 to 9 is true to the best of the information obtained and believed to be true.

Belgaum
.. 1951

Dist. Govt.Pleader,
Belgaum.

Please type
two copies

Civil Suit No. 138 of 1949.

In the Court of the Civil Judge, Sr. Dn.,
At Belgaum.

This was received with D-EP's letter No. J.428 of 12-12-50 which is filed with Exhs of C.S No. 137/49 19.12.50

1. Vinayak Vishnu Yallurkar of Vadagaon, Taluka Yellur, | Plaintiff.

VERSUS.

1. The Collector of Belgaum & Chief Administrator of the Kurandwad Junior State, and 4 others. | Defts.

Claim Rs. 187-8-0 for Court fees &
Rs.6,000-0-0 for jurisdiction.

Herein the written statement of Defendant No.1, is as follows :-

1. This defendant denies the plaintiff's suit in toto.
2. The suit being filed against this defendant - a Public ~~offic~~ Officer, by his official name, is not maintainable ~~under~~ in law.
3. It is admitted by the plaintiff that the subjects of the then Kurandwad Junior State had no right to sue the State Government in the Civil Court of the State and that such right was only conferred on 10-3-1946 by the State Notifica-tion order. Such order, therefore could not operate with restrospective effect, so as to entitle the plff. to sue the State Govt. in respect of the cause of action that is said to have arisen prior to 10-3-1946. The plff., there-fore, has no right what-so-ever to sue the successor Govt. in respect of the same cause of action.
4. Even assuming that the said order of resumtion passed by the Ruler Rajasaheb is an illegal order, still, the successor Govt. namely, the Govt. of Bombay, cannot be sued for the illegal acts committed by the Ruler of the State. The plff. has, therefore, no right to file the present suit against this deft.- namely the Govt. of Bombay ~~except under the agreement of merger between the State and the Provincial Govt.~~ The State's liability for such illegal acts alleged by the plff., has not been undertaken or accepted by the Govt. of Bombay.

It is clear from the record that the grant of the suit lands in or about the year 1864, is of the soil and not

P.T.O.

of the royal share of the Revenue. The order of resuming the actual possession of the lands is, therefore, justifiable. That the possession of the suit lands was secured by the plff's -- predecessor independently, from the occupants is denied. The allegations made by the plff. in para 2 of the plaint are not admitted. The plff. should be put to strict proof about the same.

6. The contention made by the plff., that the grant in question is an absolute grant and the Ruler had no right to revoke it, is not correct. The grant of 1864 in question is 'Jadid'. The Sovereign Power i.e. the Ruler has always, the inherent right to revoke the 'Jadid' grants. The Civil Court cannot question this right of the Ruler to deal with these Inam grants. The order of Resumption passed by the Ruler in 1942, is therefore, a perfectly valid order, it being based on proper and valid grounds. Hence this present suit against this deft., is not maintainable.

7. The order of resumption was passed in the year 1942 or thereabout. The plff's possession of suit lands from the date of the grant to the date of the resumption was under the grant of 1864, permissive in nature only and not adverse to the State. The possession of a private man for however long dura--tion is nugatory before a paramount resumption. The Plff. - cannot, therefore, claim title to suit lands by adverse posses--sion. The allegation made by the plff. in this connection in para 2 of the plaint are denied.

8. The Ruler of the then State had the inherent right to revoke the grant for the reasons mentioned in the resumption order and as such, he was also competent to dispose of it in the best manner he deemed fit. The plff., therefore, cannot maintain this suit.

9. The suit is barred under the provision of the then -- prevailing laws of the State - especially of the Revenue Juris--diction Act, then prevailing in the State.

For these reasons, the plff's suit be dismissed with cost

Belgaum,
- -1951.

Dist.Govt.Pleader,Belgau

I, B. V. Jakati, Dist. Govt. Pleader, Belgaum, on

P.T.O.

behalf of the Deft. No.1, do hereby, solemnly affirm that what is stated above in the above mentioned paras 1 to 9 is true to the best of the information obtained and believed to be true.

Belgaum,

-1951.

Dist. Govt. Pleader,
B E L G A U M.

No. 18473

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No. 1), 1950.
30th Dec.

Subject:- Civil Suit No. 138 of 1949

MEMORANDUM.

With reference to his letter No. 1427 dated the 12th Dec. 1950 forwarding a draft written statement in the suit noted above for approval, the District Government Pleader, is informed that two copies of the ~~revised~~ approved draft are forwarded herewith.

For Remembrancer of Legal Affairs.

To

The District Government Pleader, Belgaum

BM. Issued
20.3. cop
30/12 →

Sub C J for Sig:
30/12.
Advocate.

Suits :
Belgaum.
For possession of suit land with future Mesne profits.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 474.

Bombay Castle, 8th January 1951.

Letter from the Collector of Belgaum No. L.A.W. 835, dated the 14th July 1950.—

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BELGAUM.

Civil Suit No. 138 of 1949.

Vinayak Vishnu Yellurkar ... ... Plaintiff;

versus

The State of Bombay and others ... ... Defendants.

Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

Memorandum to the District Government Pleader, Belgaum, No. 16279, dated the 21st November 1950.—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

K Leg H 165—1

[P.T.O.

To

* The Revenue Department,
* The Collector of Belgaum,
The District Government Pleader, Belgaum (with two copies of the brief).

*With a copy of the brief.

No. of 1951.

Copy forwarded for information and guidance to

Sd. ... after ...
Tr. in S. Belgaum /5/
24/2
A Sdy
Cr 24-2
S Bel /5
5
Cr
27/-

BELGAUM CIVIL SUIT No. 138 OF 1949.

Chronological Statement of Facts.

1. This is a suit for possession of suit lands with future mesne profits.

2. The lands in question were granted in Inam in 1864 by the then Jahagirdars of Kurundwad State to one Janardan Chango Kulkarni—the grand-father of the plaintiff. Sanad in respect of this Inam was issued on 16th May 1864.

3. In 1896 or so, the original grantee Janardan died, leaving behind his only son Vishnu. Pending the heirship inquiry, Vishnu died, leaving his only son Vinayak. His name was entered to these Inam lands under H. Order No. 259/1316, dated 17th August 1906.

4. In 1942 the lands were resumed by the Rajasaheb of Kurundwad Jr. State under H. Order No. 758/1351, dated 21st April 1942. The reasons for resumption were (1) Disloyalty of the plaintiff and (2) the grant being jadid, the ruler had every right to revoke it.

5. On 9th March 1949 the plaintiff gave notice of suit under section 80 of the Civil Procedure Code and on 8th August 1949 he filed this suit in the Court of the Civil Judge, Senior Division, Belgaum.

Grounds of Defence.

1. *Suit not maintainable :*—The suit is filed against the Collector of Belgaum and the Chief Administrator, Kurundwad Jr. State. It is a suit against a public officer by his official name. It is, therefore, not maintainable (*vide* I.L.R. 51 Bom. p. 749).

2. The next question is whether the plaintiff can sue the Provincial Government on the cause of action stated in the plaint. It is admitted in the plaint that at the time, when cause of action arose, the subjects of the State had no right to sue the State Government in the Civil Courts of the State and that such right was only conferred on 10th March 1946. Obviously, however, such order could not operate with retrospective effect so as to entitle the plaintiff to sue the State Government in respect of the cause of action which arose prior to the relevant date. If, therefore, the plaintiff had no right to sue the State Government at the date of the cause of action, it could not sue the successor Government in respect of the same cause of action.

3. Secondly, even assuming that the order in question entitles the plaintiff to sue the State Government it can still be contended that the successor Government cannot be sued for the illegal

acts committed by the ruler of the State. In other words, if the order of resumption passed by the ruler is an illegal order, the plaintiff has not right to seek any relief in respect of that order against the Government of Bombay. It is an established principle that upon a cession of territory, an inhabitant of a ceded territory can make good in the municipal Court established by the new sovereign only such rights as that new sovereign has recognised and not the rights enjoyed under the rule of his predecessors. (Vajesing *v.* Secretary of State, 26 Bom. L.R. 1143; Sayad Asrar Ahmed *v.* Darga Committee of Ajmir, 49 Bom. L.R. p. 235). Therefore assuming that the order passed by the Rajasaheb was illegal, the plaintiff has no right to bring this action against the successor of the ruler except under the agreement of merger between the State and the Provincial Government. The State's liability for such illegal acts has not been undertaken or accepted by this Government.

4. It has been contended by the plaintiff that, the grant of 1861 was only the grant of the Inam right and that the grantee secured the actual possession of the lands by making private arrangements with the occupants. It may be seen from the Sanad issued to Janardan Chango that the words ordinarily used to indicate grant of soil viz. "water, grass, wood, stones mines and hidden treasures" have been specifically mentioned and also the words "present and future assessment". Secondly, in the whole body of the grant, the word "land" is mentioned and not the Royal share of Revenue. Thirdly, because the grant was of soil, the plaintiff could succeed in securing possession of the lands. If, at the time of grant, the lands had been in possession of occupants, the plaintiff could not have been let in possession thereof. The plaintiff has not produced any deeds to show his arrangement with the persons in possession of these lands. It is clear from the Inam Patraks and the Government correspondence at the time of the grant, that the grant was of the soil and not of the Royal share of revenue. The plaintiff's allegation in this behalf that he secured possession independently from the occupants, should be specifically denied. It should, therefore, be contended that the grant of 1864 being of the soil and not the royal share of revenue, the order resuming the actual possession of the lands was justifiable.

5. Secondly.—It has been contended that as the grant in question was an absolute grant, the ruler had no right to revoke it. It may be seen from the Inam Patraks that the grant of 1864 was jadid. It is clear from the same document that no settlement was effected in the case of these Jadid Inam Lands. The sovereign power, which is the basis of this tenure has not, in this case, at least, by its legislative constituent, bound itself by rules, creating thereby a new quality of durability. In the absence of any limitation on the sovereign

power, the ruler has the inherent right to revoke the Jadid grants. The incidents normally applicable to private grants cannot govern these Inam grants. The Civil Court cannot question or challenge this right of the ruler to deal with these Inam grants. It should, therefore, be contended that the order of resumption passed by the ruler in 1942 is perfectly valid order and the present suit is, therefore, not maintainable.

6. The next contention of the plaintiff is that he is the owner of the suit property by adverse possession. The order of resumption was passed in 1942 and the lands were taken over from the plaintiff in 1942 or thereabout. The plaintiff's possession of these lands from the date of the grant to the day of resumption was under the grant of 1864, permissive in nature only and never adverse to the state. It is not the plaintiff's case that inspite of the resumption order, he continued to be in possession of the suit lands for a full statutory period. Besides, possession of a private man for however long duration is nugatory before a paramount resumption (*vide* Daulatrao *v.* Province of Bombay, 49 Bom. L.R. 270). The plaintiff cannot claim title to the suit lands by adverse possession.

7. One of the reasons mentioned in the resumption order is the disloyal conduct of the plaintiff. Loyalty to the ruling prince is presumed to be a condition precedent to the continuance of the Inams. Though the condition of loyalty is not specifically mentioned in the original grant, the general presumption is that such condition must be deemed to be a condition precedent to the continuance of these tenures. If the plaintiff violates this condition by his conduct his inam is liable to resumption. (*Vide* Shripad Vishnu *v.* Secretary of State, 28 Bom. L.R. 1175).

8. As the ruler had inherent right to revoke the grant, he was also competent to dispose it of in the best manner he deems fit. The plaintiff, therefore, cannot maintain this suit.

9. It is not clear from the record whether Revenue Jurisdiction Act or act of similar nature was in force in Kurundwad Jr. State. The District Government Pleader, should verify and raise the necessary defences in the suit.

For these reasons it should be contended that the suit fails and it should be dismissed with costs.

35

No: J. 62 of 1951.
Belgaum, 12th March 1951.

5/50 & 5/51

To,

The Remembrancer of Legal Affairs, Bombay.

Subject:- Civil Suits on the file of C.J.S.Dn.Belgaum.

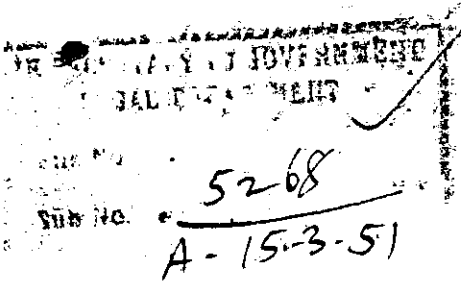
Sir,

I have the honour to sent herewith copies of the/issues framed by the Civil Judge, S.Dn, Belgaum in Reg. C.S.Nos. 133 of 1949 & 138 of 1949 for favour of your perusal.

The issues in the suit are filed in suit file 5 Belgaum 15/50

Yours faithfully,

Dist. Govt. Pleader, Belgaum.



Submitted for information
file in S. Bel 5/51
DE
23/4

Shri Iyengar to see whether the issues framed by the Court cover all the grounds. The brief was prepared by Shri Iyengar

Sd/-
23-4

Shri Iyengar

Sd/-
Contention raised in paras 2 & 4 are not covered by the issues.

Sd/-
24/4
Advocate

I S S U E S.

1. Whether plff proves that the Inam grant to his family was hereditary and permanent ?
2. Whether the resumption of the grant by Ruler of Kurandwad Junior State was legal ?
3. Whether plff's family has become by adverse possession as alleged in para 2 of the plaint ?
4. Whether Darbar Orders dated 10-3-1946 have any retrospective effect and entitled the plff to file this suit ?
5. Whether the plff's suit is within the time for reasons stated in para 5 of the plaint ?
6. Whether the suit is bad on account of multifariousness ?
7. Whether the suit is barred under Revenue Jurisdiction Act
8. Whether the D-fts prove that they or their predecessors in title are bona-fide trensferees for value without any notice of the plff's right ? If so can their possession be protected ?
9. Whether the plff is entitled to all or any of the suit properties.
10. What order ?

No mores sought.

Belgaum.
23-2-1949.

sd.
Jt. Civil Judge, S.Dn.
Belgaum.

The D.G.P. has forwarded a copy of the Issues framed by the lower Court in this case. The Issues do not cover all the grounds of appeal which are at Slip X. A copy of the Ld. G. filed on behalf of Resp. is at Slip X. The D.G.P. may be requested to move the Court for framing additional Issues ~~as~~ to cover paras 2, 3, 4 & 7 of the Ld. G.

Sol (Smt.) 24-4.

No. 6747

41

Office of the
Remembrancer of Legal Affairs,

Bombay Castle (Bombay No.1), 27th April 1951.

Subject:- C.S. No. 138 of 1949.

MEMORANDUM.

With reference to his letter No. J 62, dated the 12th March 1951 forwarding copy of issues in the above suit the District Government Pleader, Belgaum is informed that the issues framed by the Court do not cover all the grounds of defence. He is therefore requested to apply to the Court for framing additional issues to cover paragraphs 2, 3, 4 and 7 of the written statement.

submitted for sign
AAC
26/4 Asst Sol

O/C

For Remembrancer of Legal Affairs.

To

The District Government Pleader,
Belgaum.

KC.26.4.51. Issued 26/4. 29/4

42. Enclosed after issue
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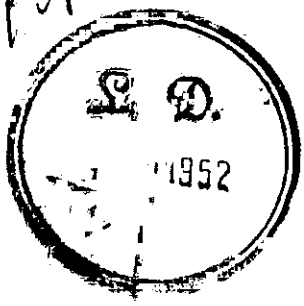


No. J. 56 of 1952.
Belgaum, 28th January 1952

To

The Remembrancer of Legal Affairs, Bombay.

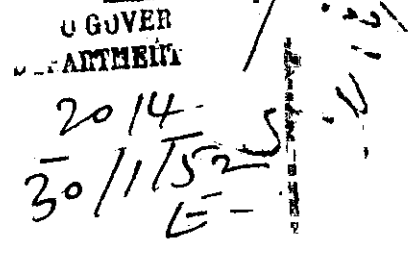
Subject:- Civil Suit No. 138 of 1949
V.V.Yellurkar
Vs.
The State of Bombay and others.

Sir,

With reference to the subject noted above I have the honour to inform you that the Civil Suit No. 138 of 1949 on the file of Jt.Civil Judge,S.Dn., Belgaum is decided by the court on 28-1-1952 and the order runs thus:-
"The suit is dismissed. Plff do pay costs of the suit to defts 1,2 and 3A and bear his own costs of the suit"

Yours faithfully,

I/C. Dist.Govt.Pleader, Belgaum.



(Dist: BELGAUM.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

FIRST APPEAL NO. 381 OF 1952.

1. Vinayak Vishnu Yellurkar of Vadgaon,
taluka Badu, District: Belgaum. ... ... Appellant (Ori. Plff.)

V/s.

1. The State of Bombay.
2. Dattatraya Kashinath Mokashi, residing at Thalakwadi, Belgaum.
3. Anandrao Ramrao Pandit of do.
4. Narayan Nagappa Kamabarkar of Yellur, Dist: Belgaum.
5. Gavadu Yedu Patil of do.
6. Rajaram Changappa Patil of Yellurwadi taluka Belgaum. ... . Respondents. (Orig. Defts.)

Claim Rs. 187-8-0 for Court fee
" " 6,000/- for jurisdiction.

The Appellant above-named being aggrieved by the Judgment and decree passed by the Civil Judge, Senior Division, in Civil Suit No. 138 of 1949 on 28-1-1952, begs to prefer an appeal to this Hon'ble Court to get forth the grounds of objection to the decree appealed from viz:-

1. That the decree of the lower court is contrary to law evidence and equity in the case.

2. That the findings recorded by the learned Judge on issues Nos. 4.5.9.12 and 13 before him are erroneous.

3. That it was an error to have hold that the Darbar order dated 10-3-1946 is not retrospective in its operation and hence plaintiff could not have filed the suit for the acts of the ruler prior to that date.

4. That the learned Judge has wrongly construed the order and failed to give proper effect to the said

order.

(5) That it should have been held that the question as whether the order dated 10-3-46 is restropective in its operation or not does not arise in the case in as much the notification deals with the procedual law which is always restrospective.

(6) That even assuming that the said order is not restrospe-etive in its operation, it does not mean that the plaintiff after the year 1946, can't bring the suit against the ruler or any person claiming under him for possession of property if his title is still subsisting.

(7) That it should have been noticed that prior to the date of notification neither the ruler of Kurundwad or persons claiming through him had any rights vested in them in respect of the suit properties and they are sought to be taken away by the said notification of 1946.

(8) That the ruling in 51 Bombay L.R. 280 relied on by the learned Judge does not apply to the facts of the present case.

(9) That it was an error to have held that the notification of 1919 and 1946 have the force of a statute so as to raise the question whether they are restrospective in their nature or not.

(10) That it should have been noted that if the act of the rulers of Kurundwad it-self was illegal, as held by the learned Judge, it can in no sense be said that they or the persons now claiming under them acquired any vested right.

(11) That it should have been held that the earlier notification of the year 1919 withheld the precedure laid down in C.P.Code of 1908, which was made applicable to the state, in respect of the right of citizens of Kurundwad State to file suits against the state for the wrong done to them and the subsequent notification of 1946 removed the bar which was then levied.

..

12) That it should have been noticed that no new rights were conferred by the notification of 1946 so as to give it the force of a newly enacted statute and thus render it only prospective in its nature.

(13) That it was an error to have held that the suit of the plaintiff was to get redress against the Government of Bombay for the illegal act of the rulers of the Kurundwad Junior State.

(14) That it should have been noticed that plaintiff by his suit has claimed no relief either by declaration or claiming any relief against defendant No. 1 the State of Bombay.

(15) That it should have been noticed that the reliefs claimed by him relate to persons who are now in actual possession of the lands in the suit and it should have been held that defendat No.1 was a proper party for the efficient adjusication of the dispute between the plaintiff and those in actual possession of the same.

(16) That the case relied on the learned Judge while considering this issue does not apply to the facts of the case before him.

(17) That the question of damages payable by defendant No.1 to those claiming under it in the event of plaintiff's success was never set up either by it or those claiming under it. Hence the Court made made out. new case.

(18) That the learned Judge has overlooked the admission of defendant No.1 in its written statement that it was the successor of Kurundwad Rules and in the absence of the agreement entered into by the High contracting parties it should have been held that the defendant No.1 did undertake all the liabilities which the

rulers by their act made themselves liable.

(19) That in so far the defendant No.1 accepted the liability of payment of Rs. 3900/- which the Kurundwad ruler owed to plaintiff and did a in fact paid the same it should have been held that defendant No.1 accepted the alibality for all the acts of former Kurundwad rulers, there being no evidence in rebuttal of the same.

(20) That an adverse inference should be drawn against the Government for failure to produce the agreement which was in its exclusive possession.

(21) That it should have been held that the suit of the plaintiff is in time.

(22) That the learned Judge having held that the suit of the plaintiff can't be said to have been barred by limitation ought to have decreed the suit of the plaintiff.

(23) That even assuming for argument's sake without conceding that that the Notification of 1946 is prospective only, the right of the plaintiff to seek possession of properties which he lost in 1942 having been in existence the lower Court erred in not decreeing the suit of the plaintiff.

(24) That it should have been notified that under section 28 of the Limitation Act, title is lost only when the plaintiff had a right to institute a suit for possession against a trespasser and he did not avail himself of the remedy for the period mentioned in one or the other articles of the Limitation Act.

(25) That it should have been held that neither section 28 of the Limitation Act nor the principles thereof applies to cases, when during the period of alleged dispossession, no suit for possession could have been filed in a Civil Court.

(26) That it should have been held that the cause of action

for the suit of the plaintiff which was in abeyance since the date of his possession in 1942 due to prior notification of 1920 accrued to him for the first time in 1946 when the subsequent notification cancelling the prior one was promulgated.

(27) That under these circumstances the suit having been brought within 12 years from the date of the accrual of the cause of action the same is in time.

(28) That the remarks in I.L.R. 43 Madras 185 to the effect viz. that "the language of the third coloum of the first schedule should be so interpreted as to carry out the true intention of the legislature, i.e. by dating the cause of action from a date when the remedy is available one," have not been given proper effect.

(29) That in view of the remarks in 41 Bom. L.R. 1002 viz. " the rule if Limitation is a rule of procedure, a brunch of the adjective law and does not create or extinguish rights except in cases of acquisition of title to immoveable property by prescription". It is only the remedy by way of a suit that is barred but the right itself continues to exist", it should have been held that right which the plaintiff had is not extinguished as the remedy by way of suit was not - available to him and hence the same was not lost to him

(30) That it was an error to have held that the suit of the plaintiff is bad for want of proper notice under Section 80 of C.P.Code.

(31) That is should have been held that the notice addressed to the Collector and Chief Administrator was served on him for and on behalf of the State of Bombay under the powers delegated to him by the latter.

(32) That the learned Judge has overlocked proviso to Act 4 of the Deccan States Merger

order which clearly empowered the Collector of Belgaum who was appointed the Chief Administrator of Kurundwad State, to exercise all the powers, which were exercised by the ruler under any provisions of law immediately before the "appointed day" (8-3-1948) for and on behalf of the State of Bombay under the powers delegated by the plaintiff.

(33) That the learned Judge failed to see that the Kurundwad State lost its territorial entity after the final integration of that State into the province of Bombay on 1-8-49 and till then it was the Collector and the Chief Administrator who for all purpose represented the Government of Bombay and hence the notice served on him was valid and proper.

(34) That the plaintiff who was pursuing the remedy which was opened to him against the ruler of Kurundwad had filed the suit against the person who succeeded him by the Deccan States order promulgated by the Government of Bombay and before filing his suit had served the notice on the person who was holding all the powers of the Government of Bombay and hence the said notice is proper and valid.

(35) That the learned Judge has not properly appreciated the observations of their Lordships at pp.667 and 674 of 52 Bom. L.R. 660 in this behalf.

(36) That the learned Judge having himself overruled the objection of defendant No.1 to the amendment application Ex. 93, should have held that the notice was proper.

(37) That on a reference to the contents of the notice it should have been held that the same was addressed to the Government of Bombay and the suit contemplated was against the Government of Bombay.

(38) That the order as to costs is wrong.

(39) That proper inferences have not been drawn from proved

facts.

(40) That the appellant craves leave to add or amend to or struck out points from the memorandum of appeal.

B O M B A Y.)
)
Dated:3-4-1962.)
tp 4 - 1962

Sd/- N.G. Anikhindi

ADVOCATE FOR APPELLANT.

MVG/18.9.

G. P. Baroda--7-49-1,000
G. R., J. D., No. 4398 dated 3-7-16

COPY

[Spl. H. C. A. S. Civil 20 e

IN THE HIGH COURT OF JUDICATURE, APPELLATE SIDE, BOMBAY

APPEAL No. 381 OF 1952 FROM ORIGINAL DECREE

Vinayak Vishnu Yellurkar. of Vadgaon, Tal. Belgaum. } Appellant (Ori.Plff.)

versus

The State of Bombay. } Respondent (Ori.Deft.No.1)

Claim—Rupees 6000/-

No. 908 OF 1952

From

THE DEPUTY REGISTRAR
High Court, Appellate Side, Bombay;

To

*The Secretary to Govt. of Bombay,
Legal Deptt., Bombay.

Bombay, 11th September 1952.

Sir,

The Appellant abovenamed having presented an appeal from the decision of the Jt.S.D.Civil Judge of Belgaum in Spl.Suit No. 138 of 149, and the same having been registered in this Court, and this Court having on 26th June 1952, ordered notice to issue, I have the honour to inform you that the hearing of the said appeal will take place on the 9th day of December 1952 or on any subsequent day which to this Court may seem convenient; and that if no appearance is made on your behalf either in person or by Advocate of this Court or agent duly authorized and instructed, it will be heard and determined in your absence.

* To be served Govt.Pleader, High Court.

L. D. 22 SEP 1952

Yours faithfully,

Sd/- X X X

for Deputy Registrar.

Y.P.P.—S 142—500z—5-39 —R(a)2

No.6982

Spl.—Govt. Pl. H. C. Bom. 3 e.?

Bombay, 19th September 1952.

Subject First Appeal No.381/1952 in Civil Suit. No.138/1949. V.V.Yellurkar -VS- The State Of Bombay No.1 and 5 Others.

To

The Collector of Belgaum, At :- BELGAUM.

Sir,

I have the honour to forward, herewith, a copy of Memorandum of First Appeal in the case noted above and to request the favour of your applying for the sanction of Government for the defence of the same and giving me such detailed instructions as you may deem necessary.

2. The High Court's notice served on me this day in the above case accompanies.

3. If any objection, under Rule 22, Order 41, Civil Procedure Code, against the decree of the lower Court is to be urged, the necessary sanction of Government for its filing may be obtained early, as it must be filed in the High Court within one month from the date of service of notice.

4. The District Government Pleader, who may have conducted the above case in the lower Court, may be asked to inform me the numbers of important exhibits which will have to be relied upon in support of the case on behalf of Government at the time of its hearing here.

5. A copy of the *Rojnama* as required by Government Resolution, Legal Department, No. 298, dated the 4th May 1911, and a certified copy of the notice given by plaintiff under section 80, Civil Procedure Code, may also be sent to me.

[redacted]

I have the honour to be,

Sir,

Your most obedient servant,

Sd/-V.T.Ganbhirwala.

for Government Pleader, High Court.

No. 6983
Bombay, 19th September 1952.

Copy with a copy of Memorandum of First Appeal No.381 of 1952 along with a copy of notice forwarded with compliments to The Remembrancer of Legal Affairs, Bombay for information and necessary action.

for Government Pleader, High Court.

L. D.
22 SEP 1952

...C GOVERNMENT
...PARTMENT
File No. 22315
23/9/52
E

L. D.

Await Counter's report.

NB
23.9.52

No. 19475/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 21st November
1952.

Subject:- Civil Suit No. 138 of 1949.
Vinayak Vishnu Yollurkar
vs.
The State of Bombay and others.

MEMORANDUM.

With reference to the subject noted above, the District Government Pleader, Belgaum is requested to send a copy of the judgment of the trial Court in the above matter for the record of this office.

for Remembrancer of Legal Affairs.

To

The District Government Pleader,
Belgaum.

BM.
20.11.

Submitted for signature
Sd/-
20/11
SO&L(M)

21/11

Submitted after issue

Await copies of judgment & decree from C.P.

Hiv

22/11

SS

No. A- 176 of 1952.
Office of the District Government
Pleader, Belgaum, Dated:- 6 -12-1952.

To

The Remembrancer of Legal Affairs,

Bombay.

Subject:- Civil Suit No. 138 of 1949.
Vinayak Vishnu Yellurkar
vs.
The State of Bombay and others.

Reference:- Your Office No. 19475/E dated:- 21-11-1952.

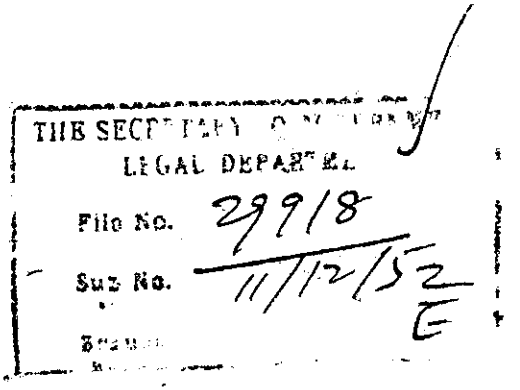
Sir,

With reference to the subject noted above, I have the honour to inform you that the papers in this suit have been already sent in High Court Appeal.

Yours faithfully,

M R Vaze

District Government Pleader,
Belgaum.



Submitted

Sanction may be accorded for the defence of First Appeal No 381/1952 in Civil Suit No. 138/1948 as requested by the Govt. Pleader High Court.

13/12

Sol(H).

No. 21299/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 18th December 1952.

To

The Government Pleader,
High Court, Bombay.

Subject:- First Appeal No. 381 of 1952 in
Belgaum Civil Suit No. 138 of 1949.
V. V. Yellurkar
vs.
The State of Bombay and others.

Sir,

With reference to your endorsement No. 6983, dated the 19th/20 September 1952, on the subject noted above, I have the honour to state that sanction is accorded for the defence of First Appeal No. 381 of 1952 as requested by you.

Yours faithfully,

for Remembrancer of Legal Affairs.

Issued 18/12 — Submitted for perusal the 17/12 Sol (H)

P.T.O.

Copy forwarded with compliments to the Collector of Belgaum for information and necessary action.

Copy to the District Government Pleader, Belgaum for information and necessary action.

BI.
17.12.

No. 4347/2

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 17th Feb. 1954

Subject:- C.S. No. 138 of 1950

MEMORANDUM.

With reference to his ~~endorsement~~ letter No. 56 dated the 28th January 1952, the District Government Pleader, Belgaum is requested to forward an uncertified copy of the judgment to this office immediately ~~and to state what is the last date for filing an appeal~~..

O.C

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Belgaum

Award copy of preface

Mss

18/2

S S Field
187

No. 9257/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 9th April 1954.

Subject :- C.S. No. 138 of 1950.

...

Memorandum.

With reference to the subject noted above, attention of the District Government Pleader, Belgaum is invited to this office letter No. 4347/E, dated the 17th February 1954 and he is requested to forward a copy of judgment immediately.

For Remembrancer of Legal Affairs.

Issued on 9/4

To

The District Government Pleader,
Belgaum.

cks/8.4.

Annual copy of journal

10/4

SS 10/4

No.12197/E
Office of the
Remembrancer of Legal Affairs,
Bombay Castle(Bombay No.1), 13th May 1954.

Subject:-C.S.No.138 of 1949.

MEMORANDUM.

With reference to the subject noted above, attention of the District Government Pleader, Belgaum is invited to this office letter No.4347/E, dated the 17thFebruary 1954 and subsequent reminder No.9257 dated 9th April 1954, and he is requested to forward a copy of the judgment immediately.

for Remembrancer of Legal Affairs.

To
The District Government Pleader,
Belgaum.

KML/12

Issued 13/5

Await copy of judgment

Nw

14/5

Sol (NIL) c.f.
14/5

No.J- 404 of 1954.
Office of the Dist.Govt.Pleader,
Belgaum. Dated:- 13-5-1954.

From

Shri M.R.Patil, B.A.,LL.B.,
District Government Pleader, Belgaum.

To

The Remembrancer of Legal Affairs, Bombay.

Subject:- C.S.No. 138 of 1950.

Ref:- Your No.9257/E, dated 9-4-1954.

Sir,

With reference to the subject mentioned above, I have the honour to state that Government is not a party in the above suit. It is therefore, requested that the correct number of the suit and the names of the parties to the suit may kindly be furnished. The parties to the above mentioned suit are: Ganesh Sarjerao Deshpande Vs.Virupaxrao Konherrao Deshpande. If the same is wanted, I will send it on hearing from you.

Yours faithfully,

M.R.Patil

Dist.Govt.Pleader, Belgaum.

L.D. 17 MAY 1954

File No. 14036

18/5/54

Immediate.

No.12783/ES
Office of the
Remembrancer of Legal Affairs,
Bombay Castle, Dated May 1954.

Subject:- C.S.No.138 of 1949.
Vinayak Vishnu ~~Kadkas~~ Yellurkar.
Vs.
The State of Bombay.

MEMORANDUM.

With reference to his letter No.404 dated the 13th May 1954, on the above subject, the District Government Pleader, Belgaum is requested to forward an uncertified copy of judgment to this office immediately.

for Remembrancer of Legal Affairs.

To
The District Government Pleader, Belgaum.

k 20

Submitted for orders
ok
20/5

SS

Issued
20/5

Accept copy of pleadings

21/5

S.S

EXPRESS.

No. 429 of 1954,
Office of the Dist.Govt.Pleader,
Belgaum. Dated:- 25-5-1954.

From

Shri M.R.Patil, B.A.,LL.B.,
District Govt.Pleader, Belgaum.

To

The Remembrancer of Legal Affairs, Bombay.

Subject:- C.S.No.138/49.
Vinayak Vishnu Yellurkar.
Vs.
The State of Bombay.

14879
28-5-54

Ref:- Your No.12783/E, dated 20/5/1954.

Sir,

With reference to the subject mentioned above, I have the honour to state that the papers in C.S.138/49 have been sent to High Court in First Appeal No.381/52 on 12-9-1952 as per High Court Writ No.3478/52, dated 9-9-1952 and the papers have not been received from the High Court as yet.

L.D.
27 MAY 1954

Yours faithfully,

District Govt.Pleader, Belgaum.

LD

Secretary

Mr. D.G.P., Belgaum
was requested under their office
memo. No 12783/E dt 20.5.54
to forward an uncertified copy of
judgment in the above case (Madrasi)
P/B. Case been sent to the
G.P.H. Cl. Copies cannot be
sent.

We may await receipt
of an uncertified copy of
judgment from the D.G.P.

28/5

Sol (MMS) 2.3
28/5

Immediate.

No. 20654-E
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 31st August 1954.

Subject:- C.S. No. 138 of 1949.
Vinayak Vishnu Yellurkar
vs.
The State of Bombay.

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Memorandum:

With reference to his letter No. 429 dated the 25th May 1954, on the above subject, the District Government Pleader, Belgaum is requested to forward an uncertified copy of judgment to this office immediately.

for Remembrancer of Legal Affairs.

To
The District Government Pleader,
Belgaum.

hsp/31/8

Submitted for signature
31/8
Sol (M.L.)

1.11.
31/8

No. 20873/E
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 6th September 1954.

To

The Government Pleader,
High Court, Bombay.

Subject: First Appeal No.381 of 1952 in Belgaum
Civil Suit No.138 of 1949.
V.V.Yellurkar
vs.
The State of Bombay and others.

Sir,

In continuation of this Office letter No.21299/E, dated the 18th December 1952, I have the honour to request you to forward to this Office an uncertified copy of judgment of the trial Court as the same is required for the record of this office.

Yours faithfully,.

For Remembrancer of Legal Affairs.

Recd on 6.9

Issued. 6/9

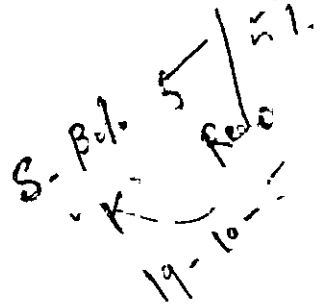
Submitted for signature
4/9 Sol (ML)

(b)

Await copy of judgt

JG
9/9

SS



Submitted

The pts were kept in await because an uncertified copy of judgt is not on the record. Due to reorganisation of States, these file is to be sent to Mysore State which will call for the

6/10 Still awaited 18/10 Filed S. Bd. 5/51